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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,242	12/01/2000	Christopher Cosgrove Creagan	13451	2514
23556	7590	04/11/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			ANDERSON, CATHARINE L	
401 NORTH LAKE STREET			ART UNIT	PAPER NUMBER
NEENAH, WI 54956			3761	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,242

Applicant(s)

CREAGAN ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10 January 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Ahr (H1298) fails to disclose an expandable absorbent material, it is noted that that the instant claim does not disclose positively recite the direction in which the absorbent material expands or that the absorbent material as a whole increases in volume as a result of the expansion. The instant claim merely discloses an expandable absorbent material, and therefore merely requires the absorbent material to be able to expandable in some way. If a portion of the material is expandable, as Ahr discloses, the claimed limitation of an expandable absorbent material is fulfilled.

In response to the applicant's argument that that Ahr (H1298) fails to disclose a surge material, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, no further structural limitations are disclosed to differentiate a surge material from other types of absorbent material. The absorbent material of Ahr is intended to absorb and retain surges of liquid during use, and therefore functions as a surge material.

In response to the applicant's argument that Ahr (H1298) fails to disclose a binder material in liquid form, it is noted that Ahr discloses in column 3, lines 6-7, a

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mixture of pentaerythriol and butanediol as the binder. Both pentaerythriol and butanediol are liquids.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Ahr ('300) teaches an advantage to crimped fibers, which provide improved resilience and resistance to compression. The intent of Ahr (H1298) to provide an absorbent structure having a reduced thickness does not obviate a need for a resilient material. Resistance to compression and distortion of the absorbent pad during use is a concern regardless of the thickness of the absorbent structure. Therefore, one skilled in the art would find it obvious to modify the absorbent structure of Ahr (H1298) based on the teaching of Ahr ('300).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 4, 7-10, 12, 14, and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr et al. (H1298) in view of Ahr et al. (5,681,300).

Ahr (H1298) discloses all aspects of the claimed invention with the exception of the thermoplastic fibers being crimped.

With respect to claims 1, 9, 16, 17, and 19, Ahr (H1298) discloses an expandable absorbent material, consisting essentially of superabsorbent and thermoplastic fibers, as described in column 2, lines 29-32 and 48-49. The superabsorbent is present in an amount from 5% to 95%, as disclosed in column 2, lines 29-30. The thermoplastic fibers are present in an amount from 5% to 95%, as disclosed in column 2, lines 31-32. The absorbent material has a density of between 0.08 and 0.25 g/cc, as disclosed in column 3, lines 38-40. The absorbent material is fully capable of functioning as a surge material or retention material.

Ahr ('300) teaches the use of crimped thermoplastic fibers in an absorbent material to provide the material with improved compression resistance and resiliency, and to provide room for the superabsorbent to swell as it absorbs liquid, as disclosed in column 14, lines 37-44.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the thermoplastic fibers of Ahr (H1298) crimped, as taught by Ahr ('300), to provide the material with improved compression resistance and resiliency, and to provide room for the superabsorbent to swell as it absorbs liquid.

With respect to claims 4, 18, and 20, the thermoplastic fibers are comprised of polyolefin, as disclosed in column 2, line 52.

With respect to claims 7 and 8, the absorbent material further comprises a liquid binder, as disclosed in column 3, lines 3-7.

With respect to claim 10, the superabsorbent, as described in column 3, lines 1-7, has an electret charge.

With respect to claims 12 and 14, the absorbent material is incorporated into a personal care product. The personal care product is feminine hygiene product, as disclosed in column 3, lines 41-42.

Claims 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr et al. (H1298) in view of Ahr et al. (5,681,300) as applied to claim 1 above, and further in view of Mukaida et al. (5,672,419).

Ahr (H1298) discloses all aspects of the claimed invention with the exception of fibers having a side by side conjugate configuration. Mukaida discloses thermoplastic fibers comprising a polyolefin and poly (vinyl alcohol) in a side by side conjugate configuration, as described in column 5, lines 23-35. These thermoplastic fibers provide improved shape retaining properties, as disclosed in column 5, lines 41-43. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent material of Ahr (H1298) with the thermoplastic fibers of Mukaida, in order to provide improved shape retaining properties.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr et al. (H1298) in view of Ahr et al. (5,681,300) as applied to claim 1 above, and further in view of McDowell et al. (6,362,289).

Ahr (H1298) discloses all aspects of the claimed invention with the exception of elastic fibers. McDowell discloses an absorbent material comprising thermoplastic fibers and superabsorbent for use in personal care products, as disclosed in column 5, lines 44-52. The thermoplastic fibers are elastic, which provide the material with greater absorption and improved comfort to the wearer, as disclosed in column 2, lines 5-10. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the thermoplastic fibers of Ahr (H1298) with elasticity, as taught by McDowell, to give the material greater absorption and improved comfort to the wearer.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr et al. (H1298) in view of Ahr et al. (5,681,300) as applied to claim 1 above.

Ahr (H1298) discloses all aspects of the claimed invention but remains silent as to the expandability of the absorbent material. Ahr (H1298) discloses superabsorbent material that is well-known in the art to swell upon contact with liquid, but remains silent as to the extent of the swelling. It would have been obvious to one of ordinary skill in the art at the time of invention to have the material of Ahr (H1298) expandable by at least 50%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr et al. (H1298) in view of Ahr et al. (5,681,300) as applied to claim 1 above, and further in view of Jackson et al. (5,350,370).

Ahr (H1298) discloses all aspects of the claimed invention with the exception of the personal care product being a diaper or adult incontinence product. Jackson discloses feminine hygiene products, adult incontinence products, and diapers as being art-recognized equivalent structures, as described in column 1, lines 15-17. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the absorbent material of Ahr in feminine hygiene products, adult incontinence products, and diapers.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CUA
cla
April 5, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

